§ 788.1 Statutory provisions.

Section 13(a)(13) of the Fair Labor Standards Act of 1938, as amended, provides an exemption from the minimum wage and overtime requirements of the Act, as follows:

The provisions of sections 6 and 7 shall not apply with respect to * * * any employee employed in planting or tending trees, cruising, surveying, or felling timber, or in preparing or transporting logs or other forestry products to the mill, processing plant, railroad, or other transportation terminal, if the number of employees employed by his employer in such forestry or lumbering operations does not exceed eight.

This exemption, formerly section 13(a)(15) of the Act, was amended by the Fair Labor Standards Amendments of 1966 (80 Stat. 830) to change the number of employees limitation from 12 to eight, and to redesignate it as section 13(a)(13).

§ 788.2 Matters not discussed in this part.

The exemption in section 13(a)(13) of the Act need not be considered unless the employee is "engaged in commerce or the production of goods for commerce" or is employed in an "enterprise engaged in commerce or in the production of goods for commerce," as those words are defined in the Act, so as to come within the general scope of sections 6 and 7. The principles of coverage are discussed in part 776 of this chapter and the discussion will not be repeated in this part. Neither does this part discuss the exemptions provided in section 13(a)(6) and 13(b)(12), or section 3(f) which includes in the definition of agriculture forestry or lumbering operations performed by a farmer or on a farm as an incident to or in conjunction with certain farming operations. (See part 780 of this chapter.)

§ 788.3 Purpose of this part.

The purpose of this part is to make available in one place the views of the Department of Labor with respect to the application and meaning of the provisions of section 13(a)(13) of the Act which will provide "a practical guide to employers and employees as to how the office representing the public interest in enforcement of the law will seek to apply it" (*Skidmore* v. *Swift & Co.*, 324 U.S. 134).

§ 788.4 Significance of official interpretations.

The interpretations contained in this part indicate, with respect to section 13(a)(13) of the Act which refers to small forestry or lumbering operations, the construction of the law which the Secretary of Labor and the Administrator believes to be correct and which will guide them in the performance of their duties under the Act unless and until they are otherwise directed by authoratative decisions of the courts or conclude, upon reexamination of an interpretation, that it is incorrect.

§ 788.5 Reliance on offical interpretations.

Under section 10 of the Portal-to-Portal Act of 1947 (29 U.S.C. 259), official interpretation issued under the Fair Labor Standards Act of 1938 may, under certain circumstances, be controlling in determining the rights and liabilities of employers and employees. The interpretations of the law contained in this part are official interpretations on which reliance may be placed as provided in section 10 of the Portal-to-Portal Act so long as they remain effective and are not modified, rescinded, or determined by judicial authority to be incorrect. However, the failure to discuss a particular problem in this part or in the interpretations supplementing it should not be taken to indicate the adoption of any position by the Secretary of Labor or the Administrator with respect to such problem or to constitute an administrative interpretation or practice or enforcement policy.

§ 788.6 Scope of the section 13(a)(13) exemption.

Employees will not be held exempt under section 13(a)(13) unless they are clearly shown to come within its terms. (*Wirtz* v. *F. M. Sloan Co.*, 4ll F. 2d 56 (C.A. 3), 18 WH Cases 878; *Gatlin Lumber Co.* v. *Mitchell,* 287 F. 2d 76 (C.A. 5) cert. denied, 366 U.S. 963.) By its terms, the exemption is limited to